

**Letter of Findings Number: 03-20120397P
Late Payment Penalty
For Tax Year 2011**

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ISSUE

I. Tax Administration—Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with operations in Indiana. The Indiana Department of Revenue ("Department") issued a proposed assessment for a ten percent late payment penalty regarding withholding tax for the tax year 2011. Taxpayer filed a protest of that penalty. The Department conducted an administrative hearing and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration—Late Payment Penalty.

DISCUSSION

The Department issued a proposed assessment for a ten percent late payment penalty regarding withholding tax for the tax year 2011. Taxpayer protests the imposition of penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer has affirmatively established that its failure to timely remit the tax held in trust was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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